44-PELRB-2024

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In re:

UNITED HEALTH PROFESSIONALS OF NEW MEXICO, AFT, AFL-CIO,

Complainant,

v. **PELRB Case No. 114-24**

REGENTS OF THE UNIVERSITY OF NEW MEXICO for its public operations known as THE UNIVERSITY OF NEW MEXICO HOSPITAL, specifically including SANDOVAL REGIONAL MEDICAL CENTER,

Respondent.

ORDER

THIS MATTER comes before the Public Employee Labor Relations Board at its regularly scheduled meeting on November 12, 2024, having been informed of the Hearing Officer's Report and Recommended Decision issued in the above-named case. After reviewing the file, and no request for review having been filed, the Board voted 3-0 to affirm the Hearing Officer's Report and Recommended Decision.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed by:
Mark Myers
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MARK MYERS, CHAIR

11/19/2024

DATE

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PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

STATEMENT OF THE CASE: This matter comes before Thomas J. Griego, designated as the Hearing Officer in this case, on Complainant's ("AFT" or "Union" Prohibited Practices Complaint alleging that the Respondent ("The Hospital" or "Employer") violated sections 5(A), 5(B), 15(F), 19(A), 19(B), 19(C), 19(F), and 19(G) of the PEBA when it refused to provide information required by the PEBA.

The PPC alleges that on May 23, 2024, the Union requested the Employer provide the names, addresses, personal phone numbers, personal e-mail addresses, job titles, salary, work site information, and an employee ID, of all bargaining unit employees represented by the Complainant. On May 28, 2024, the Employer confirmed receipt of the Request for Information. On June 4, 2024, the Union followed up with the Employer regarding the Request for Information submitted on May 23, 2024. On June 13, 2024, the Employer communicated to the Union that it would not be providing the requested information. All of the information and documents requested are presumptively relevant to the Union's duties to its members under PEBA and to enforce their rights.

UNM SRMC's actions have the potential effect of undermining the authority of the Union and eroding support for the Union as the certified representative. UNM SRMC's refusal to respond to information requests is a *per se* violation of the Employer's duty to bargain in good faith with the duly authorized representative.

The Hospital contends that none of its actions as alleged by the Complainant, constitute a *per se* violation of PEBA, have "undermined the authority of the Union" or "eroded support for the Union as the certified representative," and it agreed to provide any requested information in conjunction with Complainant's agreement to re-start the negotiations suspended in February 2024. Since the Complaint was filed, the parties agreed to engage in bargaining, at which point the Hospital provided Complainant with all of the requested information just as the Hospital promised it would do when the information was initially requested. As such, any obligation that the Hospital may have had to provide Complainant with the information it requested in conjunction with bargaining has in fact been fully discharged.

On August 9, 2024, the Union moved for Summary Judgment on all counts. The Hospital filed its Response to the Motion on August 16, 2024 asserting disputed issues of fact that preclude Summary Judgment. I issued my Letter Decision denying Summary Judgment on August 20, 2024 in which I noted that the Union did not submit any affidavits sworn under oath to establish the authenticity of its Exhibit 1 upon which the Motion rested. Therefore, I could not find any of the Union's proffered undisputed facts. Consequently, there existed multiple disputed issues of material fact that precluded summary judgment.

A hearing on the merits was held on September 24, 2024. All parties hereto were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. At the conclusion of the Hearing, as part of its Closing Argument, the Hospital requested judgment or a directed verdict dismissing all of the Union's claims.

There being no evidence of any non-union comparators by which an inference of disparate treatment may be inferred, I granted the Motion for Directed Verdict as to the Union's claimed violations of 19(A), 19(B) and 19(C), because the Union's evidence did not establish a *prima facie* case of anti-union discrimination or retaliation. I dismissed the claimed 5(A) and 5(B) violations because those sections address the rights of individual public employees, not present in this case, in contrast to the organizational and bargaining rights of unions *qua* union, as expressed in Section 15. A Directed Verdict was denied as to alleged violations of labor organization rights as an exclusive representative covered by Section 15.

I reserved judgment on whether I would grant dismissal of AFT's claim that the Employer violated NMSA 1978 § 10-7E-15(G)[1] as well as § 10-7E-15(F) until this decision. AFT argued that I should conform the pleadings to the evidence[2] even though AFT did not allege that the Hospital violated § 15(G) in either its Prohibited Practices Complaint filed on June 14, 2024 or in the parties' Stipulated Pre-Hearing Order issued September 19, 2024 – five days before the Merits Hearing.

In summary, AFT's Complaint alleging a violation of § 15(F) (a public employer shall provide to the exclusive representative information for each employee in an appropriate bargaining unit), § 19(F) (a public employer shall not refuse to bargain collectively in good faith with the exclusive representative; and § 19(G) (a public employer shall not refuse or fail to comply with a provision of the Public Employee Bargaining Act

[1] Section 15(G), in summary, provides that the information required by Section 15(F) must be provided within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every 120 days for employees in the bargaining unit who are not newly hired employees.

[2] Although the Rules of Civil Procedure do not strictly apply to our proceedings, they are sometimes referred to for guidance. As concerns the amendment of pleadings, N.M. R. Civ. P. Dist. Ct. 1-015, as amended through August 23, 2024, provides at subparagraph B that "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made on motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of the evidence would prejudice it in maintaining its action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence."

or board rule) are before me for decision, as is the hospital's motion for directed verdict concerning AFT's claim that it also violated section 15(G).

On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following

FINDINGS OF FACT:

1. Complainant is a "labor organization" as that term is defined in NMSA 1978 § 4(K) of the PEBA. (Stipulated).
2. Respondent is a "public employer" as that term is defined in Section 4(R) of the PEBA (NMSA 1978 § 10-7E-4(R) (2020)) because it is an educational institution created by the New Mexico Constitution and New Mexico Statute. (Stipulated).
3. The PELRB has jurisdiction over this matter. (Stipulated).
4. Effective January 1, 2024, the Regents of the University of New Mexico acquired the former UNM Sandoval Regional Medical Center, Inc., at which time the former UNM Sandoval Regional Medical Center, Inc. ceased to be an employer of any employees. (Stipulated).
5. I find by Special Notice that the Complainant, United Health Professionals of New Mexico, AFT, has been certified by this Board as the exclusive representative for purposes of collective bargaining at least as early as November 20, 2023, when this Board issued its Order 59-PELRB-2023 (In re: PELRB No. 304-22) for a bargaining unit at the Hospital comprising Case Managers, Clinic Techs, CT Techs, Dietitians, EEG Techs, Emergency Medical Techs, Interventional Radiology Techs, Licensed Clinical Social Workers, Medical Assistants, Mammography Techs, MRI Techs, Nuclear Medical Techs, Occupational Therapists, Paramedics, Patient Care Techs, Pharmacists, PSG Techs, Physical Therapists, Physical Therapy Assistants, Radiological Techs, Registered Nurses, Rehabilitation Techs,

Respiratory Therapists, Respiratory Therapy Assistants, Sleep Lab Techs, Social Workers, Special Procedures Techs, Unit Based Educators, Urology Techs, Ortho/Casting Techs, Anesthesia Techs, Cardiology Techs, Speech Language Pathologists, Sterile Processing Techs, Surgical Techs, Techs, Ultrasound Techs, X-Ray Techs, including House Supervisors, Charge Nurses, Lead positions and per diem positions (PRNs) employed in any of the above positions at the Hospital's University of New Mexico Sandoval Regional Medical Center campus.

6. On May 23, 2024, the Union requested from the Employer, the names, addresses, personal phone numbers, personal e-mail addresses, job titles, salary, work site information, and employee IDs for all members and non-members of the bargaining unit. (Testimony of Sarah Hamilton; Testimony of Wilson Wilson; Exhibit B).

7. AFT's May 23, 2024 request for employee information was directed to Wilson Wilson as the Hospital's Director of Employee Relations. (Exhibit B).

8. Exhibit B specifically referred Mr. Wilson to NMSA 1978 § 10-7E-15(F) and accurately restates its content as the statutory basis for the requested information:

> "Under the Public Employees Bargaining Act, specifically section 15 of PEBA, which now explicitly requires Employers to provide this information to us within 10 days for any new employee and quarterly for current employees.
>
> For your review the provision is as follows:
>
> 'F. If a public employer has the information in the employer's records, the public employer shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:
> (1) the employee's name and date of hire;
> (2) contact information, including:
> (a) cellular, home and work telephone numbers;
> (b) a means of electronic communication, including work and personal electronic mail addresses; and
> (c) home address or personal mailing address; and
> (3) employment information, including the employee's job title, salary and work site location.'"

9. Exhibit B also specifically referred Mr. Wilson to NMSA 1978 § 10-7E-15(G) and accurately restates its deadlines as follows:

> "The public employer shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit and every one hundred twenty days for employees in the bargaining unit who are not newly hired, employees…".

10. By email sent May 28, 2024, Mr. Wilson acknowledged receipt of AFT's request for information, Exhibit B. (Exhibit A; Testimony of Wilson Wilson).

11. By email sent June 13, 2024, Mr. Wilson responded to AFT's request for information stating:

> "Since UNMH is disputing AFT's certification status in District Court, we will continue to wait until the District Court has resolved disputes regarding AFT's certification before providing information owed to a certified representative. We did provide information on February 1, 2024 when the parties were in active contract negotiations and the union needed to communicate details of the tentative agreement that was anticipated the following day. Unfortunately, we are no longer in active negotiations. The union did not agree to our recent proposal to re-start negotiations, but if the union's position on that changes, we can revisit providing information in conjunction with bargaining."

(Exhibit A; Testimony of Wilson Wilson; Testimony of Sarah Hamilton).

12. The parties were engaged in negotiating a CBA at various times within the limitations period applicable to this case (See Exhibits 1-6).

13. In connection with collective bargaining agreement negotiations between the parties occurring after the Hospital's response to the information request on June 13, 2024, by September of 2024, the Hospital provided all of the information specifically called for by AFT in the first paragraph of its May 28, 2024, Exhibit B. Employee hire dates, not called for in the first paragraph of Exhibit B but required to be provided by NMSA 1978 § 10-7E-15(F) as set forth in the fifth paragraph of Exhibit B, have not been provided. (Testimony of Wilson Wilson; Testimony of Sarah Hamilton, Exhibit B, Exhibit 6).

14. Wilson Wilson testified from personal knowledge that between January 1, 2024, when the Regents of the University of New Mexico acquired the former UNM Sandoval Regional Medical Center, Inc., and the date of the hearing in September 2024, several "new hires" were made into bargaining unit positions represented by AFT. (Testimony of Wilson Wilson).

15. Wilson Wilson testified from personal knowledge that the information described in NMSA 1978 § 10-7E-15(F) has not been provided to AFT's representative within ten days from the date of hire for newly hired employees in the appropriate bargaining unit.

REASONING AND CONCLUSIONS OF LAW: This case has its genesis in the Hospital's paradoxical approach to its relationship with AFT. On one hand the Hospital proclaimed that it "will continue to wait until the District Court has resolved disputes regarding AFT's certification before providing information owed to a certified representative", while on the other, it provided all of the requested information except employee hire dates by September, in connection contract negotiations undertaken despite it earlier stated recalcitrance. Both parties to this dispute acknowledge that the duty to bargain includes the duty in Section 17 of the Act to provide, upon request, any relevant information necessary to negotiate, administer and police the CBA, and to represent all collective bargaining unit employees fairly and adequately. Otherwise, Mr. Wilson would not have emailed to AFT representative Sarah Hamilton on June 13, 2024 that:

> "We did provide information on February 1, 2024 when the parties were in active contract negotiations and the union needed to communicate details of the tentative agreement that was anticipated the following day. Unfortunately, we are no longer in active negotiations. The union did not agree to our recent proposal to re-start negotiations, but if the union's position on that changes, we can revisit providing information in conjunction with bargaining."

However, I do not decide this case on the duty to provide relevant information necessary to negotiate, administer and police a CBA, upon request, because it is not clear that the most important missing information, employee dates of hire was requested by the Union. Rather, this case is about a

public employer's obligation under § 10-7E-15 to provide certain information *without request* to any labor organization that has been certified by this Board. With that background I conclude as follows:

A. AFT DID NOT ALLEGE THAT THE HOSPITAL VIOLATED § 15(G) IN EITHER ITS PROHIBITED PRACTICES COMPLAINT FILED ON JUNE 14, 2024 OR IN THE PARTIES' STIPULATED PRE-HEARING ORDER ISSUED SEPTEMBER 19, 2024. THE INTERESTS OF JUSTICE DO NOT REQUIRE CONFORMING THE PLEADINGS TO THE EVIDENCE CONCERNING § 15(G) OF THE ACT AFT REQUEST THAT I DO SO IS DENIED.

Although informed by the Union in Exhibit B of the deadlines for providing specific information statutorily required by NMSA 1978 § 10-7E-15(G), AFT did not assert a violation of that law until the Hearing on the Merits. The merits of the case as plead do not depend on amending the pleadings to include the elements of § 15(G). Complete relief may be afforded the Complainant without the requested amendment. I am persuaded by the Hospital's argument that admitting evidence concerning violation of § 15(G) of the Act and regarding the PPC as amended to include an additional count under that section would prejudice it. Here, prejudice to the Hospital means more than just being exposed to greater liability. The Hospital has persuaded me that they were prevented from preparing their case or taking some action to support their position by treating the pleadings as amended. I also note that it appears any claims not yet plead under § 15(G) would still be considered timely if brought now.

B. AFT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT IT IS ENTITLED TO THE INFORMATION REQUIRED FROM THE HOSPITAL AS SPECIFIED BY § 10-7E-15(F) AND THAT THE HOSPITAL HAS NOT PROVIDED ALL OF THE REQUIRED INFORMATION. THE RESULTING FAILURE TO COMPLY WITH SECTION 15(F) CONSTITUTES A PROHIBITED PRACTICE UNDER), SECTIONS 19(F) AND 19(G).

AFT, has been certified by this Board as the exclusive representative for purposes of collective bargaining at least as early as November 20, 2023, when this Board issued its Order 59-PELRB-2023

(In re: PELRB No. 304-22).[3] As stipulated, the Hospital is a public employer covered by the PEBA and among the specifically denominated information that a public employer is required to provide to AFT as a certified labor organization representing a group of its employees pursuant to NMSA 1978 § 10-7E-15(F) is bargaining unit employees' dates of hire. It is undisputed that as of the Hearing on the Merits of this PPC, the Hospital has not given AFT the represented bargaining unit employees' dates of hire.

I am persuaded that the Hospital's failure to provide dates of hire is due to its misapprehension that its duty to provide information to a labor organization is defined solely by its legal obligation to provide *requested* information necessary for the union to perform its role as the exclusive representative regarding issues the union is bargaining. That misapprehension is compounded by its paradoxical position that it need not provide information while AFT's certification is disputed in District Court, while simultaneously providing some information owed to a certified representative. As a result, the Hospital has overlooked its obligation to provide certain information required by NMSA 1978 § 10-7E-15(F) without regard to whether a Union requested it and without regard to whether it is engaged in collective bargaining.

Absent full compliance with Section 15(F), AFT is impaired in fulfilling its role as an exclusive representative generally, and in negotiating a CBA inasmuch as the parties were engaged in bargaining a CBA at various times within the limitations period applicable to this case and most of the information required by Section 15(F) was provided in connection with those negotiations by September of 2024.

[3] Although the Hospital has challenged that certification by appeal to the District Court in D-202-CV-2023-09660, as of this writing, the Board's decision in 59-PELRB-2023, affirming its earlier certification of the unit in question has yet to be modified or reversed and no stay has issued preventing AFT from acting in its role as the exclusive representative for the unit in question.

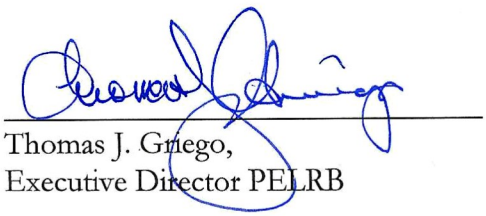
Consequently, the Hospital's failure to fully comply with Section 15(F) constitutes a prohibited practice under § 19(F) of the Act. If it is true (and it is) that a public employer's duty to bargain includes the duty to provide, upon request, any relevant information necessary to negotiate, administer and police the CBA, and to represent all collective bargaining unit employees fairly and adequately, how much more does the duty to bargain require a public employer to provide information that the legislature has determined is necessary to negotiate, administer and police the CBA, and to represent all collective bargaining unit employees fairly and adequately? Accordingly, I am persuaded that the Hospital committed a prohibited practice under § 19(F) of the Act by its failure to provide AFT with covered employees' dates of hire.

Furthermore, a failure to provide even one of the delineated kinds of information required by Section 15, *per se* constitutes a failure to comply with that Section. Consequently, the preponderance of the evidence establishes that the Hospital failed or refused to comply with a provision of the Public Employee Bargaining Act, i.e. § 10-7E-15(F), thereby committing a prohibited practice in violation of Section 19(G).

CONCLUSION: Complainant, AFT, has proven by a preponderance of the evidence that the Hospital failed to comply with of § 15(F) of the Act, thereby committing a prohibited labor practice under both §§ 19(F) and 19(G). I adopt the standard remedy in such cases i.e. to order immediate compliance with § 15(F) of the Act. In addition, the Hospital should be Ordered to: (1) cease and desist from all violations of the PEBA as found, (2) post notice of its violation of PEBA as found herein in a form acceptable to the parties and this Board for a period of 30 days in a manner consistent with how notices to employees are typically published.

AFT's prayer for enhanced remedies beyond those set forth above is denied. Although the Union argues that the Hospital has failed in the past to properly post notice of violations as required by this Board, it produced no evidence to that effect.

Issued, Wednesday, October 02, 2024.



Thomas J. Griego,
Executive Director PELRB